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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,397	07/17/2003	Steven H. Schneider	SCH05-P100A	1396
28101 7590 01/17/2007 VAN DYKE, GARDNER, LINN AND BURKHART, LLP 2851 CHARLEVOIX DRIVE, S.E. P.O. BOX 888695 GRAND RAPIDS, MI 49588-8695			EXAMINER MOSSER, ROBERT E	
			ART UNIT 3714	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/604,397	<b>Applicant(s)</b> SCHNEIDER, STEVEN H.	
	<b>Examiner</b> Robert Mosser	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/17/03, 11/08/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-11, and 14-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,445,295) further in view of Kita (US 5,114,157).

Claims 1-11, 16-23: Brown teaches an automated vending machine including:

an audio/visual unit connected to videodisk player and central controller (*Brown* Col 4:40-49, 4:67-5:22);

a disk storage and transfer device for storing multiple video disks (*Brown* Col 4:52-57);

a title display for displaying images of the video disks titles available in the disk storage device(*Brown* Col 7:33-35 & 4:52-57);

a credit acceptor (*Brown* Elements 30-32); and

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a user operable video disk selector keypad located remote from the videodisk player for selecting a videodisk to be loaded into the video disk player (*Brown* Col 3:50-53); [*The section below entitled Examiner Remarks is incorporated herein*]

Brown is silent regarding the specific inclusion of a video game player and controller structure however in a related player selection machine Kita teaches the inclusion of a video game player and multiple controllers (*Kita* Fig 1, Col 2:60-3:7). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the game player and controller structure as taught by Kita into the media sampling and sales device of Brown in order to allow the system to sell game media stored on CD and/or DVD.

The claimed feature of the device being a kiosk is understood as equivalent "unattended vending machine" as described by Brown (*Brown* Abstract).

Claims 14-15: Brown teaches loading a default disk at the operators discretion to act as an attract feature when the system is not in use (*Brown* Col 5:30-39).

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,445,295) further in view of Kita (US 5,114,157) in yet further view of Russo (US 5,619,247).

The combination of Brown/Kita is silent regarding the utilization of a touch screen input device in place of a keypad however, Russo teaches that a touch screen is a suitable selection means for selecting media in a pay-per play media environment

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(*Russo* Col 4:2-9). It would have been obvious to utilize a touch screen display of *Russo* in place of the keypad of *Brown/Kita* in order to conserve console surface space or alternatively eliminate mechanical failure issues associated with a mechanical switching device such as a keypad.

### **Examiner Remarks**

In addition while it is noted by the Examiner that *Brown* teaches the use of a CD changer for handling and loading the selected audio CDs from the interface of *Brown*. It was commonly known at the time of invention to utilize a CD changer such as the one disclosed by *Brown* as a device for the handling and loading of gaming media as evidenced by *Gerding* US 2002/0006828 (*Gerding* Para 10, & 51). Hence *Gerding* is utilized as evidence to demonstrate that the CD/DVD content is not a distinguishing feature of the presently claimed invention.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 22<sup>nd</sup>, 2006

RM



MARK SAGER  
PRIMARY EXAMINER